

Hon. Richard A. Jones
Hon. J. Richard Creatura

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EL PAPEL, LLC and BERMAN 2, LLC,)	
)	Civil Action No. 2:20-cv-01323-RAJ-JRC
Plaintiffs,)	
)	
v.)	
)	PLAINTIFFS' FOURTH NOTICE OF
ROBERT W. FERGUSON, in his official)	SUPPLEMENTAL AUTHORITY IN
capacity as Attorney General of the State of)	SUPPORT OF MOTION FOR
Washington; JENNY A. DURKAN, in her)	SUMMARY JUDGMENT
official capacity as the Mayor of the City of)	
Seattle; and THE CITY OF SEATTLE, a)	
municipal corporation,)	
)	
Defendants.)	

Plaintiffs wish to notify the Court of a recent ruling from the Second Circuit Court of Appeals in *Melendez v. City of New York*, No. 20-4238-cv, 2021 WL 4997666 (2d Cir. Oct. 28, 2021) which is relevant to this dispute. The opinion is attached as Exhibit 1.

With respect to whether the eviction bans cause a substantial impairment under the Contract Clause, *see id.* at *31: “[T]he practical likelihood of landlords such as plaintiff Bochner recovering rent arrears from delinquent small business tenants appears speculative at best.” *Compare with*

Def. City of Seattle’s Opening/Response Brief on Cross-Motions for Summ. J., Dkt. #103 at 13:
 “The enactments do not absolve tenants from their obligation to pay rent.”

With respect to whether the eviction bans are an appropriate and reasonable means of
 addressing pandemic relief under the Contract Clause:

- *See Melendez* at *38: “Here too, the City did not afford Guaranty Law relief by appropriating existing funds or raising taxes so as to place the burden of preserving neighborhoods on the city that would benefit therefrom. Instead, it transferred the burden to the ‘few shoulders’ of commercial landlords. . . . [R]easonableness and appropriateness concerns are raised by a legislative decision to provide financial relief to certain persons not through public funds but by destroying the contract expectations of other persons, particularly persons not responsible for the circumstances warranting relief.” *Compare with* Pls.’ Combined Response and Reply ISO Pls.’ Mot. for Summ. J., Dkt. #111 at 1: “[T]his case is about whether Defendants can target one segment of society to carry a disproportionate burden of the costs of [combatting the pandemic.] This they cannot do.”
- *See Melendez* at *40: “[T]he failure to condition relief on guarantor need is a further reason why the Guaranty Law cannot be deemed reasonable and appropriate to its public purpose as a matter of law.” *Compare with* Dkt. #111 at 17: “The eviction bans are not precisely and reasonably designed to meet the governments’ objectives because their protections extend to those tenants who are not suffering financial hardship and are not at risk of homelessness.”
- *See Melendez* at *41: “[T]he reasonableness of the Guaranty Law as a means to serve the City’s stated public purpose is also called into question by the law’s failure to provide for landlords or their principals to be compensated for damages or losses sustained as a result of their guaranties’ impairment.” *Compare with* Pls.’ Mot. for Summ. J., Dkt. #93 at 15: “The eviction bans fail to provide an enforceable requirement that tenants protected from eviction pay anything during the interim as a condition of that protection.”

1 DATED: November 3, 2021.

2 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

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